IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC. APPLICATION No 8213 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PANKAJ MANUBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for the Petitioner.

Mr.A.Y. Kogje, Additional PUBLIC PROSECUTOR, for the Respondent-State.

Mr.K.L. Pandya for the Custodian.

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 09/08/2004

ORAL JUDGEMENT

Rule. Mr.Kogje, learned APP, waives service of rule on behalf of the respondent.

With the consent of the parties, the matter is taken up for hearing today.

By filing this Criminal Miscellaneous Application, the petitioner has prayed that he may be released on bail during the pendency of the trial.

A complaint has been filed by one Arvindkumar Dave against the petitioner and 16 other accused, who were the members of one Avdhoot Cooperative Credit Society. As per the complaint, the petitioner and other members of the said Society have fraudulently disbursed the amount of loan to various persons and that the credit society suffered monetary loss, as, the loan was disbursed without taking any security. The said complaint was filed under Sections 406, 409, 416, 420, 463, 464, 467, 468, 471, 477A and 506 read with Sections 114 and 120-B of the Indian Penal Code. On the basis of the said complaint, the petitioner is arrested and, at present, he is in judicial custody. In pursuance of the said complaint, all the officer bearers / members, i.e. 17 persons, in all, were arrested, which include the present petitioner also. At the relevant time, petitioner was one of the Directors of the said Credit Society and before that, he was also the Managing Director of the said credit society.

The petitioner, initially, preferred a regular bail application before the learned Sessions Judge. However, that application was rejected. Therefore, the petitioner has filed this substantive bail application.

Mr.Tirmizhi, learned Advocate for the petitioner, has submitted that this High Court has released about 14 accused by imposing various conditions in the order. He submitted that since considerable time, he has continued only as an ordinary Director. Mr.Tirmizhi also further submitted that the amount he has withdrawn on his personal account has already been repaid by the petitioner and the amount which is repaid by the petitioner is Rs.13,52,000/-. It is submitted by Mr.Tirmizhi that, by selling away the land, the petitioner had repaid the said amount. So far as this aspect is concerned, there is no dispute, as, Mr.Kogje, learned APP, submitted that the petitioner has already repaid almost Rs.14,00,000/-, which he had withdrawn towards personal loan.

Mr.Kogje further submitted that, at the relevant time, about Rs.1/- crore were outstanding towards principal amount by one L.P. Group, of which, according

to Mr.Kogje, the petitioner was a member. It seems that certain people have formed the Association, viz., L.P. Group, and the members of the said Association had withdrawn some amount periodically and the total amount comes to Rs.1/- crore, approximately. It has been pointed out that out of the aforesaid amount of Rs.1/- crore, approximately, Rs.48,08,000/- have been recovered.

At this stage, Mr.Kogje has also pointed out that, from the petitioner, towards muddammal, fixed deposit of Rs.48,00,000/- are already recovered and the said F.Ds. are lying with the Police Authority.

Considering the aforesaid aspect of the matter, in my view, since most of the accused have been released by this Court on bail by imposing conditions in connection with the deposit of the amount and since the petitioner has already paid Rs.13,52,000/- towards the personal loan and since considerable amount, viz. fixed deposit of Rs.48,00,000/-, which is recovered from the house of the petitioner, is with the Police by way of Muddammal, the petitioner is ordered to be released on bail on depositing further amount of Rs.2,00,000/- latest by 30th November, 2004 before the Custodian. Mr.Tirmizhi submitted that the petitioner is, practically, penniless and he can arrange the amount after coming out from the custody and he will file an undertaking that he will pay Rs.2,00,000/- by the aforesaid time. Such undertaking to be filed on or before 31st August, 2004 before the Registry of this Court and the copy of the same should be given to Mr.Kogje, learned APP.

At this stage, Mr.Kogje submitted that some of the F.Ds. have matured and that the petitioner should agree before this Court that he will cooperate in seeing that the F.Ds. are further renewed for a further period of one year. Mr.Tirmizhi, after getting instructions, has fairly stated that for the said purpose, the petitioner will cooperate in the matter of getting aforesaid F.Ds. renewed, initially, for a period of one year and for that purpose, if signatures of any of the relatives are required, his relatives will also see that such signatures are given for renewal of such F.Ds. So far as this aspect is concerned, the Prosecuting Agency may apply to the concerned court for renewal of such F.Ds. and if such application is filed, the learned Magistrate may pass appropriate order in this behalf.

Mr.Kogje, learned APP, has also further submitted that, at present, the F.Ds. are with the Police Authority and that, as such, custody of the same is

required to be transferred to the Custodian. However, if any such application is made, the learned Judge may also dispose of such application, for the purpose of handing over of the Muddammal from the Police to the Custodian of the Society. If any order is passed in this behalf, it would be open for the Custodian to apply for extension of the F.Ds.

Mr.Kogje, learned APP, however, submitted that the investigation is already over and charge-sheet is already filed. He further submitted that the Society will have to file so many cases against the defaulting persons, for which, according to Mr.Kogje, the petitioner is required to assist the Custodian for recovering the amount, as large amount is yet to be recovered. Mr.Tirmizhi submitted that the petitioner will cooperate with the Custodian by giving full cooperation so that the Society may initiate appropriate civil proceedings for recovering the amount in question by filing various suits or by attaching the properties of defaulters or even by auctioning the same in accordance with law.

The office may accept the vakalatnama of Mr.K.L. Pandya, who is appearing on behalf of the Custodian.

Accordingly, the petitioner is granted regular bail during the pendency of the trial, on his executing a personal bond in the sum of Rs.1,00,000/- with one surety of the like amount, to the satisfaction of the lower court. Over and above the said condition, the petitioner will deposit the amount of Rs.2,00,000/- before the Custodian, as indicated in the order, within the stipulated time.

Over and above the aforesaid conditions, the petitioner shall also be subjected to the following conditions :-

(a) That the petitioner will cooperate with the Custodian for the purpose of filing necessary cases for recovery of the loan amount;

(b) He will surrender his passport immediately before the concerned Police Station, if he is holding any passport;

(c) He is to give full cooperation to the Custodian for the purpose of recovery of the amount in question and for that purpose, he will visit the Office of the Custodian at Nadiad, every Monday between 11.00 a.m. and 2.00 p.m.;

(d) He shall not take undue advantage of his liberty or abuse this liberty;

(e) He shall not act in a manner injurious to the interest of the Prosecution;

(f) He shall maintain law and order;

(g) He shall furnish the particulars of his residence at the time of execution of the bond and shall not change the residence without prior permission of this Court;

(h) He shall not leave the local limits of Gujarat State without prior permission of the concerned Sessions Judge.

The petitioner is accordingly granted bail on the aforesaid conditions and the petitioner should strictly comply with the said conditions and if there is any breach, it is open for the State to move this Court in this behalf.

The Application is accordingly allowed. Rule is made absolute accordingly.

It is requested by the learned Advocate for the petitioner that since the matter is in connection with financial irregularity, it is a fit case in which appropriate order is passed for expediting the trial. It will be open for the petitioner to apply before the concerned Magistrate for expediting the trial and the learned trial Judge may consider the said application appropriately and pass appropriate order considering the matters assigned to the learned Magistrate and since one of the co-accused is in jail, as pointed out by Mr.Tirmizhi, the learned Magistrate may try to conclude the trial subject, of course, to other urgent matters, which the Magistrate is required to decide by giving priority.

Direct service is permitted.

9th August, 2004 (P.B. Majmudar, J.)

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(apj)